



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2013-0636; FRL- 9922-77-Region 3]

#### **Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to Allegheny County Rules; Preconstruction Permit Requirements - Nonattainment New Source Review**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is granting full approval of a revision to the Commonwealth of Pennsylvania State Implementation Plan (SIP), submitted on June 25, 2012 (June 2012 SIP submittal) by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD) as amended by PADEP in letters dated February 20, 2013 and June 27, 2014. The SIP revision pertains to ACHD's Nonattainment New Source Review (NNSR) preconstruction permitting regulations which incorporate by reference Pennsylvania's NNSR provisions. This action is being taken under the Clean Air Act.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2015-0636**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted

by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, and 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

**FOR FURTHER INFORMATION CONTACT:** Paul Wentworth, (215) 814-2183, or by email at [wentworth.paul@epa.gov](mailto:wentworth.paul@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background and Summary of SIP Revision**

On December 17, 2014 (79 FR 75104), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed full approval of the June 2012 SIP submittal which included revisions to the ACHD's NNSR program contained in the Pennsylvania SIP. The revisions to ACHD's NNSR program include ACHD's Article XXI which incorporates by reference Pennsylvania's NNSR provisions at 25 Pa. Code 127.201 - 127.217. The June 2012 SIP submittal also includes other changes to ACHD's NNSR program including changes to regulatory definitions and text, deletions of certain provisions, reordered paragraphs, and inclusion of plantwide applicability limit requirements.

ACHD amended the ACHD NNSR regulations at Article XXI, sections 2101 and 2102, to meet

the requirements of 40 CFR 51.165. This approval action replaces the previous version of Article XXI which was approved into the Pennsylvania SIP on November 14, 2002. *See* 67 FR 68935.

The June 2012 SIP submittal includes amendments to the following sections of ACHD's Rules and Regulations, Article XXI: section 2101.20 (Definitions); section 2102.04 (Installation permits); section 2102.06 (Major Sources Locating in or Impacting a Nonattainment Area); and section 2102.08 (Emissions Offset Registration). After the June 2012 SIP submittal, PADEP had provided two letters clarifying the June 2012 SIP submittal. In a letter dated February 20, 2013, PADEP stated it had inadvertently redacted via strike out certain regulatory text from one provision in an ACHD regulation submitted for SIP approval in the June 2012 SIP submittal. PADEP accidentally deleted language at the end of subsection (f) of ACHD's Rules and Regulations, Article XXI, section 2102.06(f) (Requirements for Modeling). The February 20, 2013 PADEP letter requested EPA to include the full text of Article XXI, section 2102.06(f) for the revised Pennsylvania SIP including the text inadvertently deleted in the June 2012 SIP submission.<sup>1</sup>

In a second letter from PADEP dated June 27, 2014, PADEP modified the June 2012 SIP

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<sup>1</sup> For the Pennsylvania SIP, ACHD's Article XXI, section 2102.06(f) (Requirements for Modeling) should read as follows: "Where air quality models are used to meet the provisions of this section, modeling shall be based on the applicable models and other requirements specified in 40 CFR Part 51 Appendix W (Guideline on Air Quality Models). Where an air quality model is inappropriate, the model may be modified or another model may be substituted only on a case-by-case basis at the Department's discretion upon written approval by the administrator of EPA. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 40 CFR 51.102."

submittal and withdrew from its SIP submittal specific language from an ACHD regulation included in the June 2012 SIP submittal. The regulatory text PADEP withdrew from our consideration for inclusion in the Pennsylvania SIP was regulatory text in ACHD's Rules and Regulations, Article XXI, section 2102.06(b)(1), (b)(3)(a), (e), and (g) which provided a process for automatically incorporating additions, revisions, or deletions from Pennsylvania's NNSR regulations into ACHD's SIP effective on the date of revision to Pennsylvania's NNSR regulations.<sup>2</sup> *See* 79 FR 75104 (discussing withdrawn text language). As a result of PADEP's June 27, 2014 letter, the language withdrawn by Pennsylvania from the June 2012 SIP submittal is not part of this rulemaking action. However, as a result of PADEP's February 20, 2013 letter, the inadvertently redacted language from ACHD's Rules and Regulations, Article XXI, section 2102.06(f) is part of this rulemaking language.

EPA's November 17, 2014 technical support document (TSD) explains in detail the revisions to the Pennsylvania SIP contained in the Commonwealth's June 2012 SIP submittal. The TSD is included in the docket for this rulemaking action and is available online at [www.regulations.gov](http://www.regulations.gov). The TSD also explains in detail the language withdrawn from ACHD's Article XXI, section 2102.06, includes EPA's analysis of the June 2012 SIP submittal, and provides support for the proposed and final actions on the submittal. Because ACHD incorporated by reference Pennsylvania's SIP approved NNSR regulations into ACHD's NNSR regulations, EPA stated in

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<sup>2</sup> The language excluded from the Pennsylvania SIP from ACHD's Rules and Regulations, Article XXI, section 2102.06(b)(1), (b)(3)(a),(e), and (g) is the following language "[a]dditions, revisions, or deletions to such regulations by the Commonwealth are incorporated in this Subsection and are effective on the date established by the state regulation, unless otherwise established by regulation under this Article."

the NPR there was no need to re-evaluate the same NNSR elements EPA had already approved for the Pennsylvania SIP on May 14, 2012. As discussed in the NPR and in the TSD, the June 2012 SIP submittal includes revisions to ACHD's NNSR program which are consistent with the CAA, with currently promulgated Federal NNSR regulations, and with NNSR regulations which EPA has previously approved into Pennsylvania's SIP.

The NPR and TSD contain detailed discussions of the Pennsylvania SIP submission for Allegheny County and EPA's rationale for approving the June 2012 SIP submittal which addresses NNSR requirements in the CAA and its implementing regulations in 40 CFR 51.165 applicable as of the time of the June 2012 SIP submittal. Therefore, those discussions will not be restated here. No comments were received on the NPR.

## **II. Final Action**

EPA is approving as a revision to the Pennsylvania SIP the Commonwealth's June 2012 SIP submittal, as amended by PADEP in letters dated February 20, 2013 and June 27, 2014, which includes ACHD's NNSR regulations at Article XXI, sections 2101 and 2102.

## **III. Incorporation by Reference**

In this rulemaking action, the EPA is finalizing regulatory text proposing to include in a final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the ACHD regulations at Article XXI, sections 2101 and 2102 regarding Nonattainment New Source Review permitting requirements for Allegheny County. The EPA has made and will continue to make, these documents generally

available through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

##### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication

of the rule in the Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) This final rule approves Allegheny County’s nonattainment new source review (NNSR) preconstruction air quality permit program.

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 13, 2015

William C. Early, Acting  
Regional Administrator,  
Region III.



40 CFR part 52 is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

**Subpart NN--Pennsylvania**

2. In § 52.2020, the table in paragraph (c)(2) is amended by:

- a. Under Part A, revising the 7th entry for “2101.20”; and
- b. Under Part B, revising the entries for “2102.04”, “2102.06”, “2102.08.”

**§ 52.2020 Identification of plan.**

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(c) \* \* \*

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Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
* * * * *				
<b>Part A-General</b>				
* * * * *				
2101.20	Definitions	4/3/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	Revise the latest entry dated 11/26/14, 79 FR 70471 by revising the existing definition of “Major Source” and “Major Modification”
* * * * *				
<b>Part B-Permits Generally</b>				
* * * * *				
2102.04	Permits Generally	4/3/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
* *		* *		* *

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
2102.06	Major Sources Locating in or Impacting a Nonattainment Area	4/3/2012	[ <u>Insert date of publication in the Federal Register</u> [ <u>Insert Federal Register citation</u> ]	As per request by PADEP in a letter to EPA dated June 27, 2014, the following language appearing at paragraph b.1; subparagraph b.3.A; and Subsections e and g, is excluded from the SIP: "Additions, revisions, or deletions to such regulations by the Commonwealth are incorporated in this Subsection and are effective on the date established by the state regulation, unless otherwise established by regulation under this Article." As per letter from PADEP dated 2/20/2013, the June 25, 2012 SIP submission inadvertently deleted language from the end of subsection (f) of the regulation submitted with

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
				<p>SIP submittal. The SIP revision incorporating Article XXI §2102.06(f) should read as follows</p> <p>“f. Requirements for Modeling. Where air quality models are used to meet the provisions of this section, modeling shall be based on the applicable models and other requirements specified in 40 CFR Part 51 Appendix W (Guideline on Air Quality Models). Where an air quality model is inappropriate, the model may be modified or another model may be substituted only on a case-by-case basis at the Department's discretion upon written approval by the administrator of</p>

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
				EPA. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 40 CFR 51.102.”
* *	* *	*	*	*
2102.08	Emission Offset Registration	4/3/2012	<u>[Insert date of publication in the Federal Register [Insert Federal Register citation]</u>	
*	*	*	*	*

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[FR Doc. 2015-07106 Filed: 3/27/2015 08:45 am; Publication Date: 3/30/2015]